

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alex Tuminello	Team: Squad #15	CCRB Case #: 201603786	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 04/18/2016 9:00 PM	Location of Incident: [REDACTED]	Precinct: 120	18 Mo. SOL 10/18/2017	EO SOL 10/18/2017	
Date/Time CV Reported Thu, 04/28/2016 10:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/02/2016 11:09 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Moon	05309	933052	120 PCT
2. POM Robert Dominicci	06048	955888	120 PCT
3. POM Elmer Pastran	06851	956154	120 PCT
4. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Lenge	00110	924068	120 PCT
2. SGT Elizabeth Vaiano	02151	946720	120 PCT
3. POM Felix Mak	19522	958860	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Moon	Abuse: In front of § 87(2)(b) in Staten Island, Police Officer Anthony Moon threatened to arrest § 87(2)(b)	[REDACTED]
B.POM Robert Dominicci	Force: In front of § 87(2)(b) on Staten Island, Police Officer Robert Dominicci used physical force against § 87(2)(b)	[REDACTED]
C.POM Elmer Pastran	Force: In front of § 87(2)(b) on Staten Island, Police Officer Elmer Pastran used physical force against § 87(2)(b)	[REDACTED]
D.POM Anthony Moon	Force: In front of § 87(2)(b) in Staten Island, Police Officer Anthony Moon used physical force against § 87(2)(b)	[REDACTED]
E. An officer	Off. Language: At § 87(2)(b) in Staten Island, an officer made remarks to § 87(2)(b) based upon ethnicity.	[REDACTED]

Case Summary

On April 18, 2016, § 87(2)(b) was visiting § 87(2)(b) in Staten Island which is a residential building he owns. He was present at the location with wife § 87(2)(b) their § 87(2)(b)-old son § 87(2)(b) a woman by the name of § 87(2)(b) who is a property manager of § 87(2)(b)'s building and a tenant named § 87(2)(b). § 87(2)(b) exchanged words with § 87(2)(b) who was complaining about flies at this apartment. They also had a slight physical altercation. § 87(2)(b) called 911 and approximately four police vehicles with approximately nine to eleven officers arrived, however, the investigation determined that six officers were present. § 87(2)(b) provided the officers with his ID as they stood around him in a semi-circle. § 87(2)(b) instructed his wife to record the incident and an officer, identified via the investigation as PO Anthony Moon of the 120th Precinct, allegedly stated to her, "If you use the camera, you are going to get arrested. Don't use the camera" (**Allegation A**). § 87(2)(b) instructed his wife to call IAB. § 87(2)(b) believed that the officers were going to grab his wife, he attempted to walk between the officers to get towards her. He alleged that a group of several officers identified by the investigation as PO Robert Dominicci, PO Elmer Pastran and PO Moon allegedly grabbed him by his hair, upper back, torso and shoulders and threw him to the ground (**Allegations B, C and D**). While on the ground, the officers pulled his arms behind his back and held them in that position. § 87(2)(b) felt one knee pressing on each of his two elbows while simultaneously there were hands twisting each of his elbows in the opposite direction. § 87(2)(b) alleged that he also felt the officers knees pressed against his lower back and estimated that his lower back was struck with a closed fist approximately 30 to 40 times (within **Allegations B, C and D**). § 87(2)(b) was handcuffed and transported via EMS to § 87(2)(b) in Staten Island.

While at § 87(2)(b) § 87(2)(b) alleged that an officer that he could not describe allegedly accused him of being a member of the "Albanian Mafia" (**Allegation E**).

§ 87(2)(b) stated that he was released from § 87(2)(b) by a nurse and he immediately travelled to § 87(2)(b) where he received MRI and X-Ray exams. § 87(2)(b) alleged that he was diagnosed with a fractured elbow and torn left elbow ligaments.

§ 87(2)(b) was not arrested or summonsed as a result of this incident.

This case went over the 90 days bench mark cause of scheduling delays in regards to § 87(2)(b)'s refusing to provide any information to the CCRB without first consulting with an attorney.

On September 23, 2016, this case was reassigned from Investigator Abigail Shuster to the undersigned investigator due to her departure from the agency.

Video footage of this incident was acquired from § 87(2)(b) in Staten Island; however, the footage does not provide any relevant information regarding Allegation E.

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation because § 87(2)(b) alleged that he had sustained serious injuries as a result of this incident.
- As of November 1, 2016, § 87(2)(b) and § 87(2)(b) have not filed a notice of claim with the Office of the New York City Comptroller (Encl. Board Review 07).
- § 87(2)(b)
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§ 87(2)(b)
- Without a valid NYSID number, the undersigned investigator was unable to look up § 87(2)(b)'s criminal conviction history in the New York State Office of Court Administration database.

Civilian and Officer CCRB Histories

- § 87(2)(b)
§ 87(2)(b) (Encl. Board Review 01).
- This is the first CCRB complaint involving § 87(2)(b) (Encl. Board Review 02).
- PO Moon has been a member of the service for 13 years and has been the subject of three previous CCRB allegations involving two cases. § 87(2)(g)
§ 87(2)(b) In CCRB case no. 200812179, a refusal to process a civilian complaint allegation and substantiated against him. The Board recommended command discipline and the NYPD agreed with the disposition, however, no specific penalty is noted.
- PO Dominicci has been a member of the service for two years and this is the first CCRB complaint filed against him.
- PO Pastran has been a member of the service for two years and has been the subject of one previous CCRB allegation involving one case. § 87(2)(g)
§ 87(2)(b)

Potential Issues

- On July 6, 2016, Investigator Shuster contacted a female witness (possibly § 87(2)(b) via telephone, who asked to remain anonymous. The caller provided a brief and unverified phone statement. She did not wish to provide any contact information to the CCRB. The witness identified the male tenant that interacted with § 87(2)(b) as § 87(2)(b) rather than § 87(2)(b). The witness refused to provide contact information for this individual and stated that she would attempt to reach out to him in regards to attaining his contact information. As of the date of this report, the witness has not contacted the CCRB with contact information for § 87(2)(b).
- On November 3, 2016, the undersigned investigator contacted § 87(2)(b) via telephone. He stated that § 87(2)(b) and § 87(2)(b) were present for the incident. He did not have a

- telephone number for § 87(2)(b) and he stated that this individual was his tenant of his and he has since moved out. In regards to § 87(2)(b) indicated that she is afraid of the police and she did not want her contact information provided to the CCRB. § 87(2)(b) stated that he will attempt to reach out to her and he will contact the undersigned investigator back if she agrees to provide her contact information. He also stated that there is no video footage related to this incident. Lexis Nexis and CLEAR Database searches conducted on November 2, 2016, indicated negative results for § 87(2)(b) by the name of § 87(2)(b) with the address of § 87(2)(b) in Staten Island. On November 4, 2016, § 87(2)(b) contacted the CCRB via telephone and stated that § 87(2)(b) does not want her information provided to the CCRB.
- On November 4, 2016, § 87(2)(b) contacted the CCRB via telephone and stated that he does not know § 87(2)(b)'s last name and he does not have any contact information for § 87(2)(b) is no longer a tenant of § 87(2)(b).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) stated that a slightly short and overweight black male officer in uniform officer allegedly stated to her, "If you use the camera, you are going to get arrested. Don't use the camera." The investigation determined that out of all of the officers who responded to this incident, PO Moon was the only black male officer at the scene. All of the officers interviewed in regards to the investigation placed PO Moon, a black male at the incident location. PO Moon's pedigree information is generally consistent with § 87(2)(b) description of the officer and lists him as a black male standing 5'9" tall and weighing 270 pounds. As such, **Allegation A** is being pled against PO Moon.
- § 87(2)(b) alleged that approximately eight officers grabbed him simultaneously and took him to the ground. PO Moon, PO Dominicci and PO Pastran identified themselves as the officers who physically restrained § 87(2)(b) at the initial incident location. As such, **Allegations B, C and D** are being pled against them.
- § 87(2)(b) alleged that while at § 87(2)(b) an officer that he could not describe allegedly accused him of being in the "Albanian Mafia." § 87(2)(b) could not specify at which point during his stay at the hospital this allegation allegedly occurred. PO Moon, PO Dominicci, PO Pastran, Sgt. Vaiano and PO Lenge all stated that they all went to § 87(2)(b) in regards to the transport of PO Mak who was allegedly kicked by § 87(2)(b) PO Dominicci also stated that he was located inside of the ambulance with § 87(2)(b) but did not state that he guarded him at the hospital. Because the investigation could not identify or even establish at what point during his stay at the hospital the alleged remark was made, **Allegation E** is being pled against "an officer."

Allegation A: Abuse of Authority- In front of § 87(2)(b) in Staten Island, Police Officer Anthony Moon threatened to arrest § 87(2)(b)

According to § 87(2)(b) asked her to record his interaction with the police. § 87(2)(b) stated to that the phone was in § 87(2)(b)'s possession and she did not have any additional phones or recording devices on her. PO Moon allegedly stated to § 87(2)(b)

§ 87(2)(b) “If you use the camera, you are going to be arrested” “Don’t use the camera.” PO Moon allegedly repeatedly asked, “Do you want to get arrested?” § 87(2)(b) stated that this was in response to her repeated to § 87(2)(b) asking if she could have the phone that was in her husband’s possession.

§ 87(2)(b) stated that he in fact told his wife to record the incident. He alleged that an unidentified officer that he described as a female explained to his wife, “It’s against the law to record” and “You are going to get arrested. If you touch the phone, you are going to get arrested.”

According to PO Moon, § 87(2)(b) was yelling for his wife to call IAB and she responded that she did not have a phone. At no point did he state to her that it was illegal for her to record or that she would be arrested if she recorded the officers. PO Moon stated that he did not hear any additional officers make the aforementioned statements.

The anonymous female witness stated to Inv. Shuster that at no point, did any officers tell § 87(2)(b) that it was illegal to record or that she would be arrested if she did so. The witness recalled that § 87(2)(b) continuously yelled at § 87(2)(b) that she did not even have a phone in her possession.

PO Dominicci, PO Pastran, Sgt. Vaiano, PO Lenge and PO Mak all testified that at no point did any officers threaten to arrest § 87(2)(b)

§ 87(2)(g)

Allegation B: Force- In front of § 87(2)(b) in Staten Island, Police Officer Robert Dominicci used physical force against § 87(2)(b)

Allegation C: Force- In front of § 87(2)(b) in Staten Island, Police Officer Elmer Pastran used physical force against § 87(2)(b)

Allegation D: Force- In front of § 87(2)(b) in Staten Island, Police Officer Anthony Moon used physical force against § 87(2)(b)

It is undisputed that physical force was used against § 87(2)(b) in order to restrain him before transporting to a local hospital for evaluation. In dispute is the level of force that was allegedly used by the officers towards § 87(2)(b) during this incident.

§ 87(2)(b) claimed that upon their arrival, a group of approximately eight officers surrounded him. Because he thought the officers were about to grab his wife, he attempted to move towards her. The action prompted the officers to grab his hair, upper back, torso and shoulders before throwing him to the ground. Once on the ground, § 87(2)(b) alleged that the officers pulled his arms behind his back and held them in that position. He felt one knee pressing on each of his two elbows and he simultaneously felt hands twisting each of his elbows in the opposite direction. § 87(2)(b) also alleged that he was struck in his elbows by the officers’ knees repeatedly. § 87(2)(b) claimed that he was struck on his lower back with

closed first a total of 30 to 40 times. § 87(2)(b) remained on the ground for a few minutes before being handcuffed and transported to § 87(2)(b) via EMS. After being discharged from this medical facility, § 87(2)(b) travelled directly to § 87(2)(b) where he had MRI and X-ray exams done on his left and right arms. He was diagnosed with a fractured elbow and torn elbow ligaments to his left side. They placed him in a sling and recommended to undergo physical therapy. In addition, § 87(2)(b) sustained bruising to his left ribs, left shoulder, and left lower back.

On June 17, 2016, § 87(2)(b) provided four photographs of injuries to his left arm. The photographs depict significant bruising and contusions to his left elbow region (Encl. Board Review 05).

§ 87(2)(b) and the anonymous female witness were both generally consistent with the fact that § 87(2)(b) was taken down to the ground by the officers and he landed on the front of his body. Both testified that their views were obstructed at times while § 87(2)(b) was on the ground due to several officers standing around § 87(2)(b)'s body. § 87(2)(b) did not observe any officers punch her husband. The anonymous female witness did not observe any injuries on § 87(2)(b). § 87(2)(b) saw her husband approximately three hours later at § 87(2)(b) in Staten Island where she observed redness, scratches, bruising and swelling to both of his elbows.

PO Moon, PO Dominicci, PO Pastran, Sgt. Vaiano, PO Lenge and PO Mak are all generally consistent with the fact that § 87(2)(b) appeared to be an emotionally disturbed person who may have been under the influence of a controlled substance. They also were generally consistent with the fact that § 87(2)(b) was handcuffed by Sgt. Vaiano and PO Lenge and upon being handcuffed; he kneed PO Mak in the groin. Line of Duty paperwork filled out for PO Mak in regards to this incident confirms the aforementioned statement (Encl. Board Review 04). PO Lenge and Sgt. Vaiano both testified that they were not involved in bringing § 87(2)(b) to the ground due to the fact that he kneed PO Mak in the groin. PO Lenge stated that he heard a scream and observed officers taking § 87(2)(b) to the ground but he was unable to see how they physically did so. Sgt. Vaiano testified that § 87(2)(b) threw himself to the ground and the side of his body made contact with the ground. PO Dominicci, PO Pastran and PO Moon all testified that they were involved in bringing § 87(2)(b) to the ground. PO Moon stated that the officers' grabbed § 87(2)(b) handcuffed arm and brought him down to the ground. PO Dominicci testified that the officers grabbed § 87(2)(b) by his leg and his right arm and brought him to the ground. PO Pastran testified that while the other officers grabbed § 87(2)(b)'s arms, he grabbed him by the front of his shoulders in order to take him to the ground. The officers are generally consistent with the fact that the front of § 87(2)(b)'s body made contact with the ground and he was actively resisting while on the ground by moving his legs and rotating his body. At no point did any of the officers pull § 87(2)(b)'s hair, grab his torso, place a knee in him, place an elbow in his body or punch him.

§ 87(2)(b)'s AIDED Report number § 87(2)(b) filled out by PO Lenge from April 18, 2016, indicated that he was "observed ingesting an unknown substance into his mouth which made him violent and irrational" (Encl. Board Review 06).

On April 18, 2016, at approximately 8:46 p.m., § 87(2)(b) was transported to § 87(2)(b) while in police custody via EMS. The chief complaint listed for § 87(2)(b) was that he was marked emotionally disturbed person and listed as intoxicated. The records also indicated that as per the NYPD, the patient allegedly smoked PCP and swallowed some unidentified tablets. § 87(2)(b) complained of bilateral rib pain and alleged that he was punched to the left hand side of his face by his tenant. § 87(2)(b) had no visible injuries and he was diagnosed with aggressive behavior and substance abuse and discharged to home care. On April 19, 2016, at approximately 10:45 p.m., § 87(2)(b) travelled to § 87(2)(b). He complained of left arm pain and rib pain which he alleged stemmed from an assault by the NYPD. He alleged that he was forced to the ground while being arrested. X-ray exams were ordered for § 87(2)(b) and he was diagnosed with a left elbow fracture and contusions to his left shoulder, left wrist and left chest wall (Encl. See Medical Records Folder).

While § 87(2)(b) alleged that the officers grabbed him by specific parts of his body in order to bring him to the ground, both his wife and the anonymous female witness could identify specifically where the officers grabbed on § 87(2)(b)'s body as their views at times were obstructed. They did not testify that § 87(2)(b) was punched or kneed. While the officers' testimony is generally consistent with the fact that § 87(2)(b) kneed PO Mak in the groin and he was then brought to the ground and landed on the front of his body, none of the officers identify observing any injuries on § 87(2)(b).

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§ 87(2)(g)

Allegation E: Offensive Language- At § 87(2)(b) in Staten Island, an officer made remarks to § 87(2)(b) based upon ethnicity.

§ 87(2)(b) alleged that at some point during his time at § 87(2)(b) in Staten Island, an officer that he could not describe accused him of being a member of the "Albanian Mafia."

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Squad: 15

Investigator: _____
Signature Print Date

Squad Leader: _____

Reviewer:	Title/Signature	Print	Date
	_____	_____	_____
	Title/Signature	Print	Date